The Lawson Company[1] ***and*** **United Food & Commercial Workers Union Local 698, AFL-CIO.** Cases 8-CA-14743 and 8-CA-14743-2

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 27 July 1982 Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.[2] Respondent and the General Counsel also filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[3] and conclusions[4] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[5]

[1] Respondent's name appears as corrected at the hearing.

[2] Respondent filed an errata to its exceptions and supporting brief.

[3] Respondent contends that the Board should reject the Administrative Law Judge's credibility resolutions on the ground that the Administrative Law Judge made conclusory findings without discussing inconsistencies in the testimony. Respondent also contends that the Administrative Law Judge was biased and prejudiced, predisposed to find in favor of the General Counsel, and unwilling to afford Respondent a full and fair hearing. We have carefully examined the entire record in light of Respondent's contentions. With regard to the Administrative Law Judge's credibility resolutions, we find no basis for concluding that the Administrative Law Judge failed to consider all the evidence, nor do we find that the clear preponderance of all the relevant evidence establishes that his credibility resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We disavow, however, the Administrative Law Judge's characterizations of testimony which imply that Respondent's witnesses were intentionally attempting to confuse or burden the record. We further find no merit in Respondent's allegations of bias, prejudice, predisposition, and deprivation of a fair hearing.

We herein correct two inadvertent errors of the Administrative Law Judge. First, two charges, not one, were filed by the Union, the second being filed on 12 May 1981. Second, Respondent is a Delaware, not a Maryland, corporation. Further, contrary to the Administrative Law Judge's statements that Respondent's president spoke at the 22 February 1981 and 4 May 1981 meetings of store managers, the record indicates that President Thompson spoke only at the latter meeting. This erroneous statement concerning the 22 February 1981 meeting does not affect our adoption of the Administrative Law Judge's findings with regard to statements made by Thompson.

[4] The Administrative Law Judge found that Respondent violated Sec. 8(a)(1) of the Act by instituting an improved procedure for resolving employee grievances regarding disciplinary action. We have modified the Conclusions of Law and notice to reflect this finding.

[5] We shall conform the Administrative Law Judge's recommended Order to his notice by including a requirement that Respondent withdraw recognition from and disestablish the employee committee. We note that the purpose of this requirement is to remove the taint of Respondent's unlawful formation and domination of the sales assistants committee in May 1981; it is not based on the operation of any "quality circle" program Respondent may currently be conducting.

AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusion of Law 1:

"1. By granting unprecedented medical and health insurance benefits, life insurance benefits, paid accident insurance, improved death benefits, improved holiday pay, and improved procedures for resolving employee grievances, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, The Lawson Company, Cuyahoga Falls, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs accordingly:

"(a) Withdraw all recognition from and completely disestablish the employee committee formed in May 1981, and refrain from recognizing it, or any successor thereto, as a representative of any of our employees for the purpose of dealing with it concerning wages, grievances, rates of pay, or other conditions of employment."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found after a hearing that we violated the Federal law in a number of respects by illegally coercing our employees in their freedom to engage in union activities.

> WE WILL NOT grant any improved benefits in any conditions of employment, including such things as medical insurance, life insurance, accident insurance, death benefits, holiday pay, or discipline appeal system for the purpose of inducing our employees to abandon the union activities of their choice.
>
> WE WILL NOT assist, dominate, or contribute support to the employee committee which we had formed during May 1981, or any other labor organization.

WE WILL NOT threaten to close our stores in retaliation for the employees' union activities.

WE WILL NOT ask our employees to withdraw their signed union authorization cards.

WE WILL NOT ask employees to bring their grievances or economic demands directly to us for satisfaction in place of a union of their choice.

WE WILL NOT tell our employees that in no event will Respondent recognize and deal with a union of their choice.

WE WILL NOT interrogate any employees as to their prounion sentiments.

WE WILL NOT create the impression that our employees' union activities are being surveyed by management.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

WE WILL withdraw all recognition from and completely disestablish the employee committee formed in May 1981, and WE WILL NOT recognize it or any successor thereto as the representative of any of our employees for the purpose of dealing with us concerning wages, grievances, rates of pay, or other conditions of employment.

You are free to become or remain members of United Food & Commercial Workers Union Local 698, AFL-CIO, or any other labor organization of your choice.

THE LAWSON COMPANY

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held on March 16 through 19, and April 13 and 14, 1982, at Akron, Ohio, on complaint of the General Counsel against the Lawson Company, here called the Respondent or the Company. The complaint issued on June 24, 1981, upon a charge filed on April 1, 1981, by United Food & Commercial Workers Union Local 698, AFL-CIO, herein called the Union or the Charging Party. The issues involved are whether the Respondent, as alleged in the complaint, committed a number of violations of Section 8(a)(1), (2), and (3) of the Act. Briefs were filed by the General Counsel and the Respondent.

Upon the entire record and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Lawson Company, a Maryland corporation, is engaged in the retail sale of food products at a number of locations in the States of Ohio, Indiana, Pennsylvania, and Michigan. Annually in the course of its business in the State of Ohio it derives gross revenues in excess of $500,000 and receives products for resale valued in excess of $50,000 directly from points outside the State of Ohio. I find that the Respondent is engaged in commerce within the meaning Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that United Food & Commercial Workers Union Local 698, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Case in Brief*

This is a very simple case. The employees in the Respondent's approximately 700 stores in a three-state area have never been represented in collective bargaining by any labor organization. On February 20, 1981, a Friday, there developed a sudden mass movement among the employees of perhaps 200 of the stores in the general area of Akron, Ohio, towards joining Local 698 of the United Food & Commercial Workers Union. Management learned about the activities that same day and immediately started a course of action aimed at putting a stop to the prounion activity. On Sunday, February 22, Neil Gray, general counsel and vice president of the Company, telephoned Bruce Finley, the Union's organizing director in charge of the solicitation campaign, to tell him that there was a court injunction outstanding—dated 1977—against union solicitation inside these stores and that if the union organizers should continue such activities from that day on the Company would have them arrested. The next day, Monday, the Company called an unprecedented meeting of all the store managers in that part of the country, perhaps as many as 200 of them, where high officials talked to them about the organizational campaign, among other things. The union campaign continued, with the organizers soliciting on the parking lots. The Respondent went to the local court and obtained an injunction against any solicitation on its properties, inside the stores as well as on the parking lots.

On Wednesday, February 25, the Company called meetings of the rank-and-file salesclerks (called sales assistants) in all of the stores in the Akron area. In a single day four such meetings were held, two at one location in Akron, and two in another hotel in Canton. Each meeting was attended by over 200 clerks. Never before had such meetings been called. The employees were all paid for the time so spent. Again, the high supervisors who spoke there talked about the union activities that were continuing. But more important, the managers brought up the subject of what it was that the employees wanted

insofar as their working conditions were concerned, what their demands or their gripes might be. With ideas of all kinds being articulated by this mass of clerks, the supervisors asked them to state their individual grievances to various subordinate managers sitting around so they could be listed on paper and recorded. A great many clerks did that, and the Company made a record of what everybody wanted.

Shortly after this, in late March and early April, the Company held smaller meetings in order to communicate more directly with the clerks. In a period of about 10 days 13 such meetings were called, each attended by between 25 and 50 clerks from a small group of stores. All the clerks were paid again for this time so spent. Now the supervisors asked the clerks, at each of these meetings, to select two representatives to speak on their behalf, so that the resultant committee from all these small groups could meet with management and discuss the great number of demands previously listed by the Company. This was done and on April 9 the Company formally sent a written notice to all the clerks saying a meeting would take place with the committee on May 6, and listing the 10 items to be discussed at that conference. The official who prepared this list testified for the Respondent that those 10 items were the demands which had appeared the greatest number of times on the records made of individual grievances articulated at the many meetings of clerks. In fact, the list of 10 started, at the top, with the item most in demand numerically, and so on down the list. On May 6 management met with the committee, discussed the precise 10 listed demands, and on May 18 the Company announced, again in formal written document distributed to every clerk in its divisions 6 and 12, just what the council (another word for employee committee) had demanded.

By this time the Union had filed an election petition with the Board, but the election was never held because the Union filed the charge in this proceeding instead.

The facts thus set out constitute the heart of the case, called a series of violations of Section 8(a)(1), (2), and (3) of the Act in the complaint. There are additional allegations of interference, interrogation, threats to close the stores, creating the impression of surveillance, etc., but they add little of substance to the case as a whole. A clearer picture of planned and calculated inducement of employees away from a most outspoken prounion resolve, by satisfying their demands for improved conditions of employment, could not be shown. If there is one thing this statute was intended to prohibit, it is the deliberate giving to employees of a quantum of the economic demands which drive them to resort to the procedures of collective bargaining, so that the employer can avoid the statutory duty of dealing with their chosen representative. This is what is meant by restraint and coercion in Section 8(a)(1). See *Exchange Parts Co. v. NLRB*, 375 U.S. 405 (1964). The legal citable precedent on this precise point, both Board and court decisions, have been so numerous over the years as not to justify citation again.

In the circumstances, the only real question to be decided is whether the two affirmative defenses advanced by the Respondent have any merit. The union organizers appeared at the stores to distribute signature cards because the day before there had been an avalanche of telephone calls from employees in many stores asking the Union to act on their behalf. In turn this spurt on the part of the clerks was so precipitated by the fact that one evening earlier, on February 18, a clerk in one of the stores near Akron had been assaulted and killed by a criminal intruder. The crime was given great publicity throughout the area and there was a widespread sense of fear among the store employees, many of whom at times worked alone, even during late hours. Many also complained directly to the Company that same day on the telephone about what they felt was inadequate protection by the Employer. The principal contention in defense of this complaint now is that the Respondent did what it did—all of it—in response to the panic which the crime caused to spread throughout its entire complement of employees, and not in reaction to, or because of, any union activity by anybody. It contends that all it sought to do was calm the nerves of the clerks, restore a feeling of happiness and satisfaction on the job. In support the Company showed that a number of employees stopped coming to work out of fear at that time, with some stores having to close completely for a while in consequence.

The seeming second defense—I say seeming because while at times it is made to appear as a separate one, it is also at times merged as only an integral part of the first—is that whatever new benefits in working conditions the Company gave had been intended all along, had really been decided long before February. In keeping with the unending evasive, oblique, deliberately confusing, and often incomprehensible and meaningless verbiage used by defense witnesses throughout the hearing, this defense is presented in many lights: That the new benefits were in truth improvements in working conditions but only the result of old studies and internal consultations reaching final fruition; that the better conditions were not planned or really supposed to be implemented exactly then, but were in fact announced at that critical moment in consequence of the outcry against murder in the store; that the detailed changes in working conditions were not changes at all, but merely clarifications of existing terms of employment, things the Company was giving everybody all the time.

At this point, an example of this very unconvincing double talk by management representatives will illustrate the kind of testimony said to support the entire defense in this case. One of the monetary benefits the Company announced on May 19 was a major medical insurance coverage. In the listing of demands as voiced by the hundreds of clerks the month before, this item was second in the numbered list of their 10 "priorities." This word "priorities" is taken from the formal, written notice the Company handed everyone of the hundreds of employees on April 9 when it listed the 10 employee demands, and referred to them as "*your* priorities" [emphasis in original], meaning, of course, that it was what the employees were demanding, as one of their "gripes-grievances," in Labor Board jargon. As a witness for the Respondent, William Chase, regional manager, tried to make the point that the hospitalization insurance then

given was not something the Company was not already paying for before the union campaign. "[I]f . . . I had a sales assistant with a hospital bill and he couldn't pay it, Lawsons would end up paying it anyways." Asked what his words meant, the witness went on:

> If we put somebody in there and they had been in a financial bind, whether the hospitalization caused it or not, they would steal from us. If you have somebody that has no way to get the money, he's obligated to pay the bill anyway. In the case of hospitalization, I think he probably would think we owed it to him anyway, so he would wind up stealing.

What this man was saying is that the employees of this company are all thieves, and therefore the Company was in the same position as any employer contractually obligated to pay its employees' hospital bills. Restated: when a man steals to pay his bills, it is no different than when the employer voluntarily gives him the money. When an educated man, experienced as this witness said he was in the field of personnel relations, speaks as he did on this record, he discredits not only himself personally, but also the entire affirmative defense he pretends to prove. I have no intention of burdening this Decision with responsive discourse to this sort of testimony, which runs through hundreds of pages from one management official after another.

B. *Cause and Effect*

All this activity—a single meeting of over a hundred store managers, four more, with over 200 clerks each, many others with smaller groups of the rank-and-file, and finally the creation of an employee committee followed by bargaining with it before granting substantive new benefits to everybody—must have had a cause. Nothing like this had ever happened before in this Company. The Respondent says that the cause of it all was the murder that had taken place on February 18, together with the related fears and complaints about that incident voiced by the employees. It insists the union activities had nothing to do with its entire course of action, and asserts the negation of any antiunion motivation. The complaint alleges, instead, that the driving cause—the major if not the sole cause—was the organizational campaign which the Respondent wanted above all to frustrate. This is the real question to be decided in this case. The effect is objectively proved—the Company invited direct dealings with the employees—an unfair labor practice on its face (*NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959)), and it satisfied their demands to an extent, again an unquestionable violation of Section 8(a)(1) of the Act, "hornhook law," as the General Counsel correctly says. Was it or was it not motivated by antiunion animus?

Now, it is true that many of the complaints by the employees involved protection and security, and that the Company helped them in that respect by placing bright lights in the stores, and by instituting added precautions. It is not claimed that there was anything wrong in that. It is also a fact that at the large meetings—with both supervisors (store managers) and clerks, the officials who ran the meetings reminded everybody of the no-solicitation rule barring intruders from trespassing inside the stores or on the parking lots. In fact, the speakers asked both managers and clerks was it true the union organizers had been entering the stores, and they even went around visiting all the stores to get as much information as possible about activities by outsiders. Again, the complaint charges no impropriety in that. Indeed, although the Respondent obtained a state court injunction against the Union to put a stop to such intrusion into company property, the General Counsel expressly excluded all such doings by the Company from this case.

This entire proceeding arose because at those same meetings the company spokesman also talked about the merits of union representation. Keeping strangers out of the stores is one thing; protecting the Company's property, looking after the personal safety of its employees, alone at night, after the publicized crime, was a perfectly proper thing for the Company to do. But what relationship is there between a better vacation plan, which the Company gave, and protection from strangers entering the stores? How does hospitalization insurance, never before enjoyed by these employees, add to their sense of personal security when alone in the store? How could these things be called the effect of the sole cause which the Respondent insists on?

The question can be put differently. In this case enforcement of the no-solicitation rule meant there was to be no distribution of union authorization cards on the company property, no talking up the Union while people were working in the stores, and no entering of the stores by anybody except regular customers coming on business. But it is something else again to tell employees the Union of their choice is no good; "if you sign a card it is only a blank check to pay dues and no more; we, the Company, do not need a union and can do as well with you without the intervention of a third party; if you insist we will close the stores." What do the merits of union activity have to do with physical security at night, or even the private property rights of any employer? And the fact is the company officers at these meetings talked a great deal of the second concept—the pros and cons of unionism.

As to just what the company officers told the assembled managers and clerks, there is a conflict in testimony between the witnesses called by the General Counsel and those offered by the Respondent. The essential burden of the government witnesses is that the managers passed the message that the Company would not stand for any union representation at all. They quoted various high supervisors very explicitly. The intended purport of the defense witnesses generally is that they did not interest themselves in the union activity as such, but spoke only about the no-solicitation rule, about outsiders trespassing, about people working when they were supposed to, and nothing more. In the circumstances, it will be best to start with significant excerpts from the testimony of the high supervisors who spoke at the meetings, for they gave ample basis for eventual resolution of this credibility question in favor of the prosecution witnesses.

A good tip off came from one of the two principal witnesses for the Company, Foster Macrides, then vice

president in charge of employee relations. He was present at the principal meetings including the first, on February 22, when the company president, Sam Thompson, also spoke. After referring to the numerous employee telephone calls the Company had received during the weekend about the publicized murder a few days earlier, his lawyer asked: "What did you do in response to the immediate impact?" His answer was: "It is a very difficult process to describe, because I have to introduce another factor. Relatively soon, within a matter of days of the killing, we were also faced with a new problem, and that was organizing activity." At this point company counsel interrupted to say: "I don't want to hear about organizing activity yet. . . . What did you do in response to the telephone calls immediately after the Signal killing?" Again came the answer: "It is very difficult to respond to that question, because everything runs together."

I can understand the lawyer's discomfort when his witness revealed the Respondent's true concern and reaction to the prounion movement, and the witness then continued to talk about the security problem. But later he did also add the following:

> Q. Did you discuss or say anything yourself at that meeting about the union organization effort in your stores over that weekend. . . .
>
> A. I did discuss the organizing activity that occurred and essentially covered two points: One, I reemphasized the no-solicitation rule, the policy of the Company, along with the fact that there was a permanent injunction, and that we expected the managers to enforce the basic company policy. Beyond that, I emphasize[d] the point that the Company felt, and it was the Company's position that a third party representative, in effect, the Union, was not necessary. I said that it will do the Company no good nor the employees no good.

Macrides was then asked whether at the later four meetings, when the clerks were gathered on a single day, did he "get a chance to say anything to the sales assistants regarding the Union organization campaign.

> A. Essentially the same thing. I was able in some of the meetings to emphasize more strongly in the meetings that were smaller groups . . . the fact that a permanent injunction had existed, and our feelings toward third party representations; that it would not be a benefit to the employees, nor the Company.

Chase, the regional manager, was also present at the four mass meetings with the clerks. He recalled Macrides telling the group "that we felt we did not need third party representation to fix our communication problem. We felt we could do it ourselves. That was the general gist of it." As he continued, the witness was then asked had Macrides suggested the clerks "get their withdrawal cards back from the Union. . . .

> A. The comment was made by Foster, in general, was the fact that many people may have signed cards, and, certainly, it was their right. However . . . if they didn't understand what they were signing or didn't understand why they were signing the card or had second thoughts, the way to get the card back would be to go down to the union hall and asked for it back; that if they didn't, then they would be on file forever.

This message, that the employees did not need a union, was passed by the store managers to the rank and file. A number of them so testified. They must be believed, of course, because some of the supervisors who ranked higher than store managers passed the same message and gave like testimony. Ralph Jody, a division manager said he visited between 50 and 60 stores thereafter. From his testimony: "Basically, I gave the company's position as far as union bargaining agent . . . I said we did not feel we would need a third party to mediate between the company and the employees." "My purpose of going around to the stores was to talk to the employees about union solicitation that was taking place at the time and how the employees felt or how the company felt about the situation." Another supervisor, Lizzie Haines, said she accompanied Jody to a number of the stores. "We had asked if there had been union organizers in. We told them that we felt that we didn't need a third party representation. Basically, that's the extent of it."

Chase was up front at two of the mass meetings of clerks. He testified:

> Basically, he [Macrides] talked about cards . . . well, the injuction we had and violation of the no-solicitation policy and then went into the people maybe not understanding why they had signed the card, and how they could get it back and that. In fact, it could be conceived a signing a blank check because dues are predicated upon the needs of the organization. By signing that card, there was no way they could determine as employees what their dues were going to be.

There is testimony by the General Counsel's witnesses that at the first mass meeting of all the managers on February 23, President Thompson spoke of another group of stores in the area, like this one, called Clarkins. That one, whose employees had been represented by this same union, was in the process of closing down it stores entirely just at about the time this organization campaign was going on. More than one witness quoted Thompson as saying Clarkins had closed because of the Union, and that Thompson would close these stores too if the Union came in. Management witnesses denied having heard Thompson say that. Thompson himself did not appear at the hearing, so that the incriminating testimony is not directly contradicted. Again, from Chase's testimony, quoting President Thompson:

> Q. What reference, if any, did he [Thompson] make to the Clarkins stores?
>
> A. Well, it was part of the conversation, I don't recall exactly. It was during a period of time when he was talking to the managers about pulling to-

> gether because of the economic conditions we were operating in; that we needed to work together. We needed to communicate and remain flexible and competitive in the industry. That was probably the only time that the union was ever mentioned. It was mentioned to the degree that we needed to remain flexible. We didn't feel we could operate and be competitive if we operated a union in our stores, and, certainly . . . . Clarkins was a company in their industry which is discount stores, could no longer be competitive, and, therefore, close their doors.

Chase testified a month after the General Counsel witnesses had testified about Thompson plainly threatening he would not have a union and would close as had Clarkins before permitting a union to function here. After reading the transcript, Chase toned it down. But the statement—as he quoted the president—that Thompson "felt" he "could not operate" with a union was really no different than what the earlier witnesses had said.

Credibility resolutions therefore start with these admissions by the Respondent's own witnesses, that the employees—management and clerks—were gathered in hundreds, paid to attend, and told that the Company did not want a union, that the authorization cards that had already been signed were only blank checks to pay dues for which nothing could be had in return, that the signers should consider recalling them, and that the Company could not operate with the Union. When to this is added the further fact—plain as could be on the record—that these same supervisors then solicited and recorded employee grievances all over the place, urged the employees to select area employees repesentatives to deal with the Company on their behalf, paid them for the time necessary to carry on such activities, sat and discussed the employee demands with the committee so chosen, and then made a number of substantive improvements in the conditions of employment to satisfy those grievances, there can be no question as to where credibility must go. I believe every one of the government witnesses who testified as to what they were told at these meetings, and by store managers and other supervisors who then returned to the stores to pass on the Respondent's message.

The questions at the hearing were put to these witnesses, almost all ordinary store clerks, about a year after it all happened. Many meetings had been held, so that often the girls could not remember at just which meeting this or that was said, or even whether it was by one or the other of the two high supervisors who spoke at the various meetings. Most of the meetings went on for several hours and much was said. After the first big gatherings of 200 store managers on February 23, there was another such meeting on May 4, and still others of store managers after that. The clerks were first called together late in March in groups of over 200 at a time, and then again later in groups of 30, 40, or 50. If the witnesses later were vague about just which meetings they heard what they heard, such inaccuracy does not impair their credibility in the circumstances. I also do not think it necessary to repeat here every jot and tittle of the testimony. For to do so would only serve the obvious attempt by the Respondent to so befuddle this record as to make it virtually impossible to put a clear picture of precisely everything that was said and done. To me, it is the significant and revealing substantive things that count, and not pointless and irrelevant frills.

Barbara Wilson was a store manager, and quoted President Thompson at the May 4 meeting of managers:

> He said there was no way that he would let the union go into the stores; that he would close the stores in Summit County before he would let the union in; that if the girls tried to go for other jobs and that their union activities will make it hard for them to look for work. . . . And he also said that Clarkins were unionized and look what happened to them.
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> Q. Did he give you any instructions as managers?
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> A. He said that we should go back and tell the clerks that union activities would be bad for them or that he would close the stores.

This witness also recalled Macrides speaking at another meeting of store managers:

> Q. Do you recall anything that he said at the meeting?
>
> A. Just that the union couldn't do anything for the girls, and that they should call the union or write to them and withdraw their authorization cards. . . . That they should get their authorization cards back from the union, withdraw their cards, and that it was up to the store managers to keep the unions out."

Wilson added that she went back and repeated what she had been told to say to each of her four store clerks. From the same witness, on cross-examination, again quoting Macrides:

> Just that it was up to the managers to keep the Union out, to inform their girls the Union will be back for them; that they were to call and get their withdrawal cards; that they could get their withdrawal cards by calling or writing down to the union hall and telling them that they wanted their union cards. This is what the 2 hours consisted of.

Shirley Rousseau was also a store manager, and also listened to President Thompson:

> The main thing was to convey to the clerks that if they would join the union, it would force him to close the Summit County stores, because it would be like the Clarkins stores and the union had forced them to close. Before he would have it, he would close down the Summit County stores.

Asked had Chase, also present then, given any instructions, the witness added: "Just to inform the clerks about the bad parts of the union if the union got into the Company." Rousseau also testified that at another meeting—

> The main subject was that the managers were the direct link from the company to the clerks; that we were to dissuade them from the union; to ask them to get their union cards back . . . . They had stated that the clerks did not need a third party such as the union to be able to talk to the company about their problems, that they could come directly to them. . . . They had also said that they had talked or were going to get these committees started earlier, but they hadn't got around to it. . . . A committee where they would be a sounding board for the clerks to be able to talk to the Company. With the girls being unionized, and them getting upset, they speeded up the process of these meetings so they could have their voices.

Rousseau added that she too in fact told her store clerks what she had been told to repeat.

These two ladies, Wilson and Rousseau, were supervisors within the meaning of the Act, and counsel for the Respondent literally stipulated to that fact. In its brief it ignores its own admission and now says they are only "arguably supervisors," and not "speaking agents," a "lowest level of management." In the face of their direct testimony that they were told by higher management to get back into the stores and threaten the clerks into abandoning the Union, the assertion now that the managers were not agents, were not acting on behalf of the Respondent at all, is completely belied. It is but another contention, among the many, spread throughout the defense that merits no comment at all. In matters of this kind, the supervisors speak for the employer. It is they whom the rank and file look to every day as the voices of authority.[1]

We come to the testimony of the clerks. Three of them corroborated Store Managers Wilson and Rousseau. According to *Christina Batten*, Wilson asked her in February whether she was for or against the Union. Later, in May, after another mass meeting of managers that Rousseau had attended, she told Batten "that the union would be bad for all of us if we voted it in." *Kimberly Wilson*, the store manager's daughter, testified that her mother told her that she had been told at a meeting "that there would be tape recorders and bugs put in the store, and that we weren't to talk about the union . . . that the lower volume ones [stores] would be closed . . . . . The reason why the Clarkins stores were closing down was because of the union." According to *McCulley*, another clerk, on or about May 8—this would be shortly after the May 4 meeting of store managers where President Thompson spoke—Store Manager Wilson told her "we are supposed to tell you that the union is no good for you and that the reason Clarkins was closing was because they were unionized. McCulley also recalled that on another occasion the store manager "told us that we were supposed to—the Union was no good for us, and we were supposed to call down or write down and ask for our authorization cards back."

Carol Fleming testified that in May when her store manager, Lenora Mattern, returned from a meeting with the high officials:

> She had just come from a manager's meeting, and she was telling me that she was told by Sam Thompson that there was no way there would a union, that they would close the stores like they did, you know, in Clarkins. This was what we were told is why Clarkins went under . . . . .
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> Q. At any point, did Lenora Mattern tell you that her sentiments towards the union had changed in any way?
>
> A. Yes, they did, after the manager meeting that they had had. The Company had called managers together for a meeting, and she wasn't for it anymore. She was told to kill the union . . . She said they were told to get rid of the union, that they were not to have it in, that they would not benefit in any way where managers before had thought they would be brought into, you know, a union deal.

Clerk *Sandra Couch* quoted her manager, Margaret Thompson, again after a meeting of the managers:

> She said that she came from the meeting, that they told her at the meeting that I was the only one out of all the clerks in the store that had signed a card for the union and filled it in. She asked me why I had done this. I just looked at her, and then she proceeded to tell me that if a union was to get in, that Lawson's would close the stores and we would be without work. Then she went on to tell me about when she had worked at places where they had unions, about how they got the short end of the deal, and all they wanted was their fees and they didn't do anything and didn't think they were good.

Employee *Sharon Tompkins* testified as to her store manager, Joan Clark: "She had mentioned that if the Union was to get in, that Lawson's would have to close down a lot of stores, because they couldn't afford to keep them open." *Victoria Yensen's* store manager told her, in May, "There was one meeting that she went to that they said that Clarkins Stores, because of the union, was closed. The Union got in and they closed." After another manager's meeting, still according to Yensen, her manager said "they said they were going to put bugs in our store

[1] The following facts are clear on the record: Store managers are in charge of stores at all hours with the exception of a few occasional hours when touring managers visit the stores; they effectively recommend hiring; they schedule employees' hours of work; they grant or withhold time off; they are all salaried whereas the clerks under them are hourly paid; they attend management meetings; at times they have power to transfer clerks from one store to another. Cf. *Big John Super Stores*, 232 NLRB 134 (1977); *Illini Steel Fabricators*, 197 NLRB 303 (1972); *Associated Hospitals*, 237 NLRB 1473 (1978); etc. I also agree with the General Counsel's alternate contention that even if these store managers should be deemed nonsupervisory in the statutory sense, surely they were acting as agents of the Respondent. The testimony shows without question that they were told, by the highest officials in the Company, to return to the stores and tell the rank and file that the Employer would retaliate against them if they persisted in their union activity by putting an end to their jobs, prove positive that the Respondent was using them as a vehicle to accomplish its prohibited objective. Cf. *Helena Laboratories*, 225 NLRB 257 (1976). When an employer sends over 100 managers to tell maybe 1,000 clerks they had better quit their prounion activities or else, the defense that all the managers were acting on their own is the purest nonsense.

and tape recorders, that we shouldn't discuss the Union or say anything bad about the Companys . . . . That if the Union ever got in the stores would be closed."

There is also testimony by clerks as to what they were told at employee meetings which they attended. *McCullen* recalled that at one of the larger mass meetings of clerks the speaker said "that joining the Union was like giving money—signing a blank check, because all they want was their money anyway." She also said that Bruce Bastoky, a high official, told the girls at a later smaller meeting of clerks, that "they were saying that we was supposed to choose two representatives for our area to give our complaints to or give our suggestions."

I credit all these witnesses for the General Counsel, both rank-and-file clerks and supervisory store managers. I therefore find that by each of the following acts of its supervisory personnel, some committed by more than one agent of the Company, the Respondent violated Section 8(a)(1) of the Act: (1) Threatening to close its stores if the employees chose to be represented by the Union; (2) asking its employees to withdraw their signed union authorization cards; (3) asking employees to bring their grievances or economic demands directly to the Respondent for satisfaction in place of a union of their choice; (4) telling employees that in no event would the Respondent recognize and deal with a union of their choice; (5) interrogating employees as to their prounion sentiments; and (6) creating the impression that the employees' union activities were being surveyed by management (Store Manager Thompson's statement to clerk Couch that she was the only clerk in the store who had signed a union authorization card).

I also find that by asking the rank-and-file clerks, at each of the meetings of employees held during March and April, and which every clerk was paid to attend, to speak out what grievances and complaints they had concerning the working conditions, the Respondent again violated Section 8(a)(1), time and time again. That this was done for the purpose of dissuading the employees from their prounion resolve is beyond question.

On the subject of the Respondent having solicited employee grievances all over the place, told the employees to choose among their fellow workers persons to form a committee to negotiate their demands with management, and then met with that committee and granted some of their substantive demands, all the while paying the employees generously for time spent doing that, there also is really no question of credibility that could put the facts in question. I say paid them generously because a number of employee witnesses testified, without contradiction, that when they went to the many meetings called by the Company they were paid for twice as many hours as where spent listening to the antiunion talk. While disputing the phraseology used by the General Counsel's witnesses, the real contentions advanced by the company witnesses is that they listened to, and recorded, the many demands which the employees themselves, unsolicited, wanted to bring to the boss, and that, when committee representatives were chosen, it was the employees who wanted to do that, not the Company. Both arguments are completely destroyed by the testimony of its own witnesses, and the admitted facts of what the Company proceeded to do, a good part of it documented in its own hand. As has been said more than once, it is in the nature of human conduct that short of overt confession of guilt the state of mind can only be shown by reference to collateral and related behavior which points, more or less persuasively, either to a lawful and proper motivation or to a dishonest and deceitful intent. Proof of ulterior or evil purpose in the doings of men is therefore necessarily indirect and circumstantial, with the indications appearing in diversified words and acts having both qualitative and cumulative weight.

The following is from the testimony of employee witnesses, all speaking of the 13 smaller employee meetings where Chase and Bastoky spoke:

> *Thompson*: He [Bastoky] said the reason for the meeting was for the clerks to elect a representative for themselves, that we were supposed to air our complaints and any suggestions we may have, and they were supposed to report back to the supervisor.
>
> Q. Did he tell you how this was to be set up, the structure of what he was setting up?
>
> A. We were supposed to elect a representative among ourselves. The clerks were supposed to elect someone that we felt could give time to the position, someone who didn't think the Company was in a mess.
>
> Q. Did he tell you how often this committee would meet?
>
> A. Every three months.
>
> *McCulley*: [T]hey were saying that we were supposed to choose two representatives for our area to give our complaints to or give our suggestions.
>
> *Peck testified*:
>
> Q. What generally was the purpose of the meeting?
>
> A. To discuss complaints for working conditions and just about anything anybody wanted to talk about just got up on the floor . . . . Chase suggested that we form these committees, have a person represent so many stores, and they was to take the complaints then of the employees and return them at the next meeting.
>
> *Batten testified*:
>
> Q. Do you remember what Chase said at the meeting, if anything?
>
> A. He was asking for suggestions about our stores, if we had any complaint, he wanted to know our complaints. He wrote them all on a chalk board. He said he would try to get some of these things for us like security and all that for our stores. Then he wanted to pick two people for a committee that we would take our complaints to. So if we had any complaints, we were supposed to take them, or they were supposed to come to our store and them two people would take them up to the plant for us. So we just picked them people, and that was all we did. We wanted better security, pay raises, stuff like that, change the store . . . .

Q. Did Chase ever tell you why he was asking for the suggestions?

A. So we could communicate better between us and them. He said they would come to our store, or they will go to our store and we would tell them our complaints, and they would take them to him.

Yensen testified:

Q. And did he [Chase] tell you what the purpose of the meeting was?

A. It was to elect representatives to take and listen to our grievances and take them to the Company.

Now, as a sampling, from the testimony of the two speakers at these meetings: Personnel Manager Bastoky testified: "We asked the sales assistants in those meetings to select two people from that group, a representative and an alternate who would attend the third meeting."

Chase: Basically, my introductory remarks was the commitment of the company to improve the communications, that we had committed to have the meetings . . . and it would be an ongoing thing either on a monthly basis, depending upon schedules and we wanted to hear what the people had to say. We talked about a need to have a vehicle for communications. Obviously, 50 people at a time would not be able to probably attend the meeting, so we felt that if we had some small groups representing a large area who could identify needs in a specific area and share it with other people, it would be better to have that type of group meeting. So out of that came the selection of the people to be actually the communications vehicle, the liaison, if you will. So we made a recommendation that they pick somebody about a year with the company as opposed to a brand new employee. The only thing we were looking for was general communication and general ideas.

As told by the Company to do, the employees at each of these 13 group meetings selected a committee member and an alternate. On April 9 the Respondent posted a notice in all the stores, addressed to "All Sales Assistant Division 6 and 12." The subject heading read "SALES ASSISTANTS COMMITTEE REPRESENTATIVES AND TOPICS FOR JOINT COMMITTEE MEETING." The notice then read as follows:

Attached is a list containing the names of the committee representatives you elected at the Supervisory Area Sales Assistant Meetings held on March 28 through April 3, 1981.

The first Sales Assistant Committee Meeting will be held on May 6, 1981.

The following is a list of topics, according to *your* priorities that will be discussed at the first meeting.

1. Vacation Pay
2. Hospitalization
3. Sick Pay
4. Holidays Off
5. Seniority
6. Security Systems
7. Double Coverage for stores closing at 9:00
8. Breaks
9. Death in Family Benefits
10. Disciplinary Memo Appeal

Please forward any suggestions, using the suggestion form assistant representative via the inter store mail, by April 22, 1981.

A two-page attachment to this notice listed the name and address of each committee member chosen by the employees—26 individual clerks.

On May 6 management met with the employee committee and discussed the demands at length. On May 18 the Company distributed another notice, again to "All Sales Assistants Division 6 and 12." The notice informed all employees as to what the Company was considering doing about each of the demands. It reads as follows:

Vacation Pay—A new vacation pay policy proposal based on anniversary date to anniversary date, as opposed to calendar year earnings, has been submitted to management.

Hospitalization—Improved health care benefits and their cost are being studied by Bruce Bastoky and will be presented at the next meeting.

Sick Pay—A proposed policy of earned sick days has been submitted to management.

Holiday Pay—Proposals of no minimum work requirement, change in holiday hours for pay, and more paid holidays are being studied by management.

Seniority—The recognition of seniority in the store, as a means for fairer scheduling of hours has already been adopted as Regional policy.

Security Systems—Improved security systems are currently being studied by management with recommendations made to the President of Lawsons within 6 weeks.

Double Coverage—Double coverage after 8:00 p.m. for Division 6 and 12 is permanent. Double coverage for stores that close at 9:00 p.m. was not discussed by virtue of the fact that Daylight Savings Time makes it light out at 9:00 p.m. Further discussion will continue on this subject at a future meeting.

Breaks—A break policy will be issued by Region 4 management within 10 days.

Death in Family Benefits—Proposed policy revision to include grandparents, grandchildren, step children and guardians has been adopted and a Region 4 policy will be issued within 10 days.

Disciplinary Memo Appeal—A procedure (through the "chain of command") for appeal of Disciplinary Memos will be issued as Region 4 policy within 10 days.

The next meeting will be held the first week of August, 1981. In summary, improvements in Vacation Pay, Hospitalization, Sick Pay, Holiday Pay

and Security Systems are being explored now by management.

Improvements and creation of Breaks, Death in Family Benefits and Disciplinary Memo Appeal will be issued as policy within 10 days.

Improvements and recognition of Seniority and Permanent Double Coverage have already been issued and adopted as policy.

The next day, May 19, the Respondent distributed still another notice to "All Full-time Sales Assistants." Its opening statement reads:

> We are pleased to announce the following life insurance and medical coverage benefit revisions to be effective June 29, 1981, for all full-time sales assistants (36 hours or more per week). This revision follows an extensive study of employee benefit programs in the convenience store industry.
>
> *MAJOR MEDICAL*
>
> Major medical coverage will be offered on a voluntary basis to all full-time sales assistants who have completed their probationary period with the Company assuming 50% of the costs. The cost to eligible employees is as follows: Single coverage: $3.09 per month; family coverage: $7.45 per month. Employee contributions will be handled through monthly payroll deductions.
>
> The major medical plan provides 80% reimbursement for covered expenses after a $100 deductible. The plan has an unlimited lifetime maximum and features a $300 out-of-pocket limit beyond the deductible after which reimbursement goes from 80% to 100%.
>
> LIFE INSURANCE
>
> All full-time sales assistants will receive $5,000 life insurance coverage after one year of continuous service at no cost to the employee.
>
> *PERSONAL ACCIDENT INSURANCE*
>
> This coverage will be made available to all full-time sales assistants at a minimal cost to the employee, based on the amount of coverage purchased. If you decide upon coverage for yourself, your monthly premium rate will be 46¢ for each $10,000 you select. If you decide upon coverage for yourself and your dependents, the monthly premium rate will be 65¢ for each $10,000 you select for yourself.
>
> The amount of coverage available is a maximum of ten (10) times the employee's annual wage.

During this same period, the Company made a number of other changes in conditions of employment. Among these it also established a system that would insure to all employees hired as full-timers the entire 36 hours of work a full-time employee was supposed to enjoy. Many were doing much less than the 36 hours. From now on they were assured the full 36 hours, even if the particular store where they were regularly stationed could not add that work. In such cases they were given the work at another store.

At this point a special comment is in order. As set out above, very extended arguments were advanced by the management officials maintaining that many of the changes that were made were not changes at all, but only clarifications, formalizations, or rearrangements of existing conditions. When such arguments could not even artificially be made, the witnesses contended that the changes were not new, but had been planned long before these events, had always been in the mind of the specialist whose job it is to keep the Respondent competitive, flexible, profitable, or "sophisticated," as one official put it. Page after page of such so-called testimony goes on and on in the transcript. There is even more extended discourse aimed at avoiding the plain fact that the Respondent invited the election of an employee committee and bargained with it as a vehicle for avoiding having to negotiate with the Union which the employees were seeking to establish here. The witnesses referred to the direct dealing with the employee committee it created as a "quality circle," an advisory council, a quality council, a communication vehicle, a sales assistant council, a contract relationship, etc., etc., page after page of technical synonyms that in no sense change the plain facts. Were I now to respond to all these fanciful wordings of the witnesses, this Decision, too, would go on and on and the true objective of the Respondent—to kill off the union movement permanently—would be furthered, rather than arrested, as the statute commands.

I find that by establishing the employee committee, and by bargaining with it as the spokesman for all the employees, the Respondent violated Section 8(a)(1) and (2) of the Act. Cf. *NLRB v. Cabot Carbon Co., supra*, and *Ace Manufacturing Co.*, 235 NLRB 1023 (1978). That this employee bargaining committee was a labor organization, absolutely created by the Respondent, is the clearest act shown on this record.

I also find, as shown precisely by its May 19, 1981, announcement in writing, that by granting to the employees throughout all stores in its divisions 6 and 12 (1) highly improved and very valuable medical insurance, (2) life insurance coverage, and (3) personal accident insurance, the Respondent violated Section 8(a)(3) of the Act. In the light of the Respondent's own written language to all employees telling them literally how these were new and valuable benefits they had not previously enjoyed, there is hardly reason to explain in detail exactly how whatever other benefits existed in the past related, or did not relate to the ones then announced and received by the employees.

There were other new benefits of a material value given at the same time as the foregoing. These included death benefits—3 days off with pay—with relation to relatives not previously covered; improved holiday pay, and a more efficient procedure for resolving grievances regarding disciplinary action taken by management. I find that each of these improvements was also a benefit in conditions of employment given to all the employees, via the unlawful company-formed employee bargaining committee, and that by granting each of them again the Respondent violated Section 8(a)(3) of the Act.

C. *Discriminatory Enforcement of a No-Solicitation Rule*

As stated above the Respondent has a no-solicitation rule applicable in all its stores; it applies to any nonemployee who enters the store, even if he is also a purchasing customer. It also applies to the employees themselves. As written in the employee handbook, it precludes employees as well from soliciting for outside activities inside the stores, whether they be on or off the clock. All this is undisputed, and enforcement of the rule, in the past or in the future, is a right the General Counsel does not deny to this Respondent. Indeed the fact it obtained a state court injunction to keep all the union organizers out of the stores is not said to have violated the statute.

What is said to have been an unfair labor practice, in violation of Section 8(a)(1) of the Act, is the fact, alleged in the complaint, that in contrast to the strict measures taken right after the union organizational campaign started to put a stop to that sort of solicitation, the Respondent took a much softer attitude in enforcing the rule against many other kinds of solicitations that had been going on in many of the stores. Such disparate enforcement of a no-solicitation rule—strictly against efforts by the employees to unionize but easygoing and permissive with respect to solicitations having other objectives—has been held to violate the statute. *Lance, Inc.*, 241 NLRB 655 (1979).

No less than 20 witnesses testified on this one aspect of the case. Six of them—a store manager and five clerks—spoke of solicitation and sales of outside articles to store employees in a number of stores before the start of this union campaign. They recalled the sale of Avon products by outsiders, Tupperware catalogues left in the stores where clerks filled in orders and later received deliveries of purchases in the same stores, raffle and racing tickets sold by nonemployees to others or even by one employee to another, school candy and sales of that sort by neighbors, etc. One clerk said the store manager pinned up a bag where the purchasing clerks placed their money payments for Avon products later delivered in that same bag. Other witnesses called by the Respondent testified that in the stores where they worked no such things happened, that a written no-solicitation rule was posted, most of the time if not always. These included roving supervisors and store clerks. Maybe some of these witnesses were exaggerating to favor the party which called them to the hearing, but I have no real reason to discredit either one of the two groups in their entirety. After all, there are hundreds of stores, and merely because something happened at a number of them does not of necessity mean the same activities—enforcement or nonenforcement of the rule—were carried on elsewhere. Similarly, it may well be that a written copy of the no-solicitation rule was in fact posted at some stores, and not at others. There is direct testimony that at a number of stores the rule was not posted for long periods of time. More than one employee testified she never saw any notice posted where she worked at all.

In my considered judgment all this testimony does prove that management ignored the solicitations that went on in a number of its stores by both outsiders and its own employees, so long as none of it bore any relationship to collective representation by a third party. In the light of the immediate reaction to the union campaign in February 1981, companywide and strict as can be, so utterly in contrast to the indifference previously shown to other solicitations that had been going on, the disparate enforcement of the rule is absolutely clear. I therefore find that by such strict enforcement of its rule against union organizing activities, coupled with the permissive attitude towards other forms of solicitation in the stores, the Respondent did violate Section 8(a)(1) of the Act.

To remedy this particular unfair labor practice, proved on the record, the General Counsel asks only that the Respondent be ordered to cease and desist from future discriminatory enforcement of its rule, and that it inform the employees of such proper conduct in the future. There is no contention that the Company must now permit union solicitation in the stores either by employees or by outsiders. In the circumstances, there is no point in burdening this Decision with all the details of the evidentiary proof concerning precisely what kind of nonunion solicitation went on, just where and how often it happened, exactly which witnesses saw this or that. Nor do I think it worthwhile answering a number of defense assertions made in the Respondent's brief on this minor aspect of the case. It may be true that somewhere in an office drawer in each store there was put away a company handbook which had the rules written down. But that fact hardly serves as proof of constant reminder to all 900 employees, or to efface the evidence that many clerks never saw the thing and that they in fact engaged in pretty widespread solicitation in the presence of supervisors—which all the store managers are. Nor is there any merit in the further defense contention that knowledge of, and the acquiescence in other forms of solicitation by the store managers, does not mean the Respondent, or management, knew about it at all. It is enough to have found once that the store managers are in fact supervisors in this Company. They are in charge of the store most of the day.

A final item. When the highest supervisors, each in charge of a number of stores, went around visiting the stores immediately after the union organizational campaign started, they asked many questions of the clerks and the store managers to gather information about the activities of the outside union agents who had been soliciting inside the stores, and later on the parking lots. This they had a right to do, because the General Counsel concedes that when, armed with that information, the Respondent went to the state court for a restraining order, it did nothing wrong as far as this statute is concerned. The complaint nevertheless alleges that some of this questioning, about union activities, constituted illegal interrogation in violation of Section 8(a)(1). There is a blur here in much of the testimony. A number of witnesses testified that they were asked had anyone spoken to them about the Union, had anyone asked them to join, etc. But this is what the emissaries from the main office had to do to ascertain whether outsiders had in fact entered the stores for such purposes. The interrogators did

not give the employees those assurances against reprisal of which the Board's *Johnnie's Poultry Co.*, case speaks (146 NLRB 770 (1964)). I do not think this fact alone is enough in the situation here presented for a finding of illegal interrogation. There is a substantive difference between the supervisor just asking an employee had anyone given her a union card, and a group of management trying to learn whether in fact strangers to these stores—where at times clerks work alone with no manager in sight—had been violating a no-solicitation rule concededly proper under any law.

But even were it true, as some of the testimony seems to indicate, that at times the visiting supervisors continued their questioning to the point where they were really probing into the feelings of the clerks themselves on the question of unionism, the remedial order in this instance would not change. There is other proof of straight illegal interrogation, as already found above, violative of Section 8(a)(1). The remedial order to be posted in all the affected stores must have assurance against illegal interrogation in any event. Accordingly, I make no finding that by questioning the employees about the activities of outsiders who may have entered the stores to solicit union membership was in any sense an unfair labor practice.

IV. THE REMEDY

The Respondent must be ordered to cease and desist from again committing any of the great variety of unfair labor practices which have been found in this Decision. It must also be ordered to post notices, assuring its store employees that such violations will not take place again, in every one of the stores included in its divisions 6 and 12 as of the time of the events. I deem some of the violations committed of such gravity—particularly the numerous substantial improvements in conditions of employment—as to warrant the further order that the Respondent be ordered to cease and desist hereafter from in any manner violating the statute.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By granting unprecedented medical and health insurance benefits, life insurance benefits, paid accident insurance, improved death benefits, and improved holiday pay, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

2. By sponsoring the formation of the employee committee on or about May 1981, directing the election of its representatives, dictating its purposes, and controlling its functioning, the Respondent has assisted, dominated, and contributed support to a labor organization, and has thereby engaged in and is engaging in violations of Section 8(a)(2) of the Act.

3. By the foregoing conduct, by threatening to close its stores in retaliation for the employees' union activities, by asking its employees to withdraw their signed union authorization cards, by asking employees to bring their grievances and economic demands directly to the Respondent for satisfaction in place of a union of their choice, by telling employees that in no event would the Respondent recognize and deal with a union of their choice, by interrogating employees as to their prounion sentiments, and by creating the impression that the employees' union activities were being surveyed by management, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER[2]

The Respondent, The Lawson Company, Akron, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Granting employees improved economic benefits in matters touching upon wages, hours, and other conditions of employment for the purpose of inducing them not to support a union of their choice.

(b) Assisting, dominating, and contributing to the support of the employee committee formed on or about May 1981, or any other labor organization.

(c) Recognizing the employee committee formed at that time, or any successor thereof, as a representative of any of its employees for the purpose of dealing with the Union concerning grievances, wages, rates of pay, hours of employment, or other conditions of work.

(d) Threatening to close its stores in retaliation because of its employees' union activities.

(e) Asking its employees to withdraw their signed union authorization cards.

(f) Asking employees to bring their grievances or economic demands directly to it for satisfaction in place of a union of their choice.

(g) Telling employees that in no event would it recognize and deal with a union of their choice.

(h) Interrogating employees as to their prounion sentiments.

(i) Creating the impression that the employees' union activities are being surveyed by management.

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[2] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(j) In any other manner intefering with, restraining, or coercing its employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post in each and every one of its retail stores included in the Respondent's divisions 6 and 12 during the spring of 1981, mostly in the State of Ohio, copies of the attached notice marked "Appendix."[3] Copies of said notice on forms provided by the Regional Director for Region 8, after being signed by its representatives, shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."